

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON**

**CALVIN JONES**, individually, and on behalf of all others similarly situated,

Case No.

*Plaintiff,*

## CLASS ACTION COMPLAINT

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## **DEMAND FOR JURY TRIAL**

**EFINANCIAL LLC**, a Washington limited liability company and **PARAISO RELIANT DIRECT INSURANCE SERVICES, INC.**, a California corporation,

### *Defendants.*

## **CLASS ACTION COMPLAINT**

Plaintiff Calvin Jones (“Jones” or “Plaintiff”) brings this Class Action Complaint and Demand for Jury Trial against Defendant eFinancial LLC (“eFinancial” or “Defendant eFinancial”) and Defendant Paraiso Reliant Direct Insurance Services, Inc. (“Reliant Direct” or “Defendant Reliant Direct”) to stop both of the Defendants from violating the Telephone Consumer Protection Act by making unsolicited, autodialed calls to consumers, including to

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1 consumers registered on the National Do Not Call registry (“DNC”) and to other consumers that  
 2 have specifically asked for the calls to stop, and to other obtain monetary relief for all persons  
 3 injured by Defendants’ conduct. Plaintiff, for his Complaint, alleges as follows upon personal  
 4 knowledge as to himself and his own acts and experiences, and, as to all other matters, upon  
 5 information and belief, including investigation conducted by his attorneys.

6 **INTRODUCTION**

7 1. eFinancial provides life insurance coverage to consumers on behalf of top  
 8 insurance companies such as AIG, Mutual of Omaha and Prudential.<sup>1</sup>

9 2. eFinancial solicits life insurance sales using its own agents and through external  
 10 agents and agencies who function as eFinancial partners.

11 3. eFinancial provides its partners with a back-end system that provides insurance  
 12 quotes from eFinancial-affiliated companies, underwriting services, application reviews, tracking  
 13 of the medical exam process, confirmation that policies have been issued, and general customer  
 14 support for consumers the partners sell insurance plans to.<sup>2</sup>

15 4. eFinancial partners sell life insurance directly on behalf of eFinancial.

16 5. Reliant Direct is an eFinancial partner.

17 6. In order to solicit business from new consumers, Reliant Direct engages in  
 18 unsolicited telemarketing using an autodialer, including calls to consumers that have their phone  
 19 numbers registered with the DNC.

20 7. eFinancial benefits directly from the illegal practices employed by partners such  
 21 as Reliant Direct. It profits from every sale and turns a blind-eye to the sales methods used by  
 22 Reliant Direct.

23  
 24<sup>1</sup> <https://efinancial.com>

<sup>2</sup> <https://www.efinancial.com/eindependent/case-management/>

8. In Plaintiff's case, Reliant Direct made 8 unsolicited, autodialled calls to his cellular phone, despite Plaintiff having his phone number registered with the DNC to prevent such calls and despite Plaintiff's multiple requests for the calls to stop.

9. In response to these calls, Plaintiff files this lawsuit seeking injunctive relief, requiring Reliant Direct to cease placing unsolicited calls on behalf of eFinancial to consumers' cellular telephone numbers using an automatic telephone dialing system without consent and otherwise calling telephone numbers registered on the DNC, as well as an award of statutory damages to the members of the Classes and costs.

## PARTIES

10. Plaintiff Jones is a Cadwell, Georgia resident.

11. Defendant eFinancial is a Washington limited liability company headquartered in Bellevue, Washington. eFinancial conducts business throughout this District, the State of Washington, and throughout the United States.

12. Defendant Reliant Direct is a California corporation headquartered in La Mesa, California. Defendant conducts business throughout this District, the State of Washington, and throughout the United States.

## **JURISDICTION AND VENUE**

13. This Court has federal question subject matter jurisdiction over this action under 28 U.S.C. § 1331, as the action arises under the Telephone Consumer Protection Act, 47 U.S.C. §227 (“TCPA”).

14. This Court has personal jurisdiction over both Defendants and venue is proper in this District under 28 U.S.C. § 1331(b) because Defendant eFinancial resides in this District, and because Defendant eFinancial controlled, authorized, and/or ratified Reliant Direct's calls from this District.

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## COMMON ALLEGATIONS

**Reliant Direct Markets Life Insurance Plans Exclusively on Behalf of Defendant eFinancial**

15. When placing calls to consumers, Reliant Direct agents identify themselves either as Reliant Direct, an eFinancial partner, or directly as eFinancial.

16. When Plaintiff answered a call, or called Reliant Direct, he was told that he was dealing with eFinancial.

17. According to the Utah Insurance Department, John Paraiso, the owner of Reliant Direct is an agency affiliate of Defendant eFinancial:

Agency Affiliations	City	State	License Number	Active Date	Status
<a href="#"><u>EFINANCIAL LLC</u></a>	BELLEVUE	WA	104501	Dec 05, 2018	Active

The California Department of Insurance also shows that Paraiso has an agency affiliation with eFinancial:

### Agencies or Organizations

This licensee is authorized to transact on behalf of the following

EFINANCIAL, LLC

For: Accident and Health Effective: 12/06/2018

EFINANCIAL, LLC

For: Life-Only Effective: 12/06/2018 4

18. As the California Department of Insurance shows in the image above, Paraiso is authorized to transact business only on behalf of eFinancial.

**eFinancial Directs, Authorizes, and/or Ratifies the Unlawful Telemarketing Conduct Reliant Direct Engages in to Solicit New Business**

19. eFinancial receives payment for each life insurance plan Reliant Direct sells.

20. Reliant Direct sells life insurance plans on behalf of eFinancial.

<sup>3</sup> <https://secure.utah.gov/agent-search/agentDetails.html?agent=2Jp3VxJdBw>

<sup>4</sup> [https://interactive.web.insurance.ca.gov/webuser/lic\\_sts\\_utl.get\\_lic\\_details?P\\_IL\\_LIC\\_NBR=0F54863](https://interactive.web.insurance.ca.gov/webuser/lic_sts_utl.get_lic_details?P_IL_LIC_NBR=0F54863)

1        21. eFinancial provides direct customer support to the consumers that agencies such  
 2 as Reliant Direct solicit plans to and also handles a lot of the back-office support on behalf of  
 3 agencies like Reliant Direct:

4 <b>Why It Matters</b>	5 <b>A More Efficient Process</b>	6 <b>A More Effective System</b>
<p>5            Running an independent brokerage is    6            better with the <u>backing of eFinancial's</u>  <u>personalized case management and</u>  <u>service</u>. With an average of five years    7            industry experience, our dedicated    8            representatives partner with you and    9            your customers every step of the way.    10          With eFinancial on your side and behind    11          the scenes, you can help make your    12          customers' lives better.</p>	<p>5            You can spend time growing your    6            business while our experienced  <u>concierge case management team</u>  <u>moves cases through the underwriting</u>  <u>process</u>. We take care of reviewing    7            applications, tracking the medical exam    8            process, confirming policies are issued,    9            and everything in-between.</p>	<p>5            Our back-office support and    6            experienced product specialists get the    7            job done seamlessly. You also benefit    8            from our <u>monthly carrier audits</u>,  <u>extensive training resources</u>, and    9            educational materials. We're always    10          available to offer support or answer    11          questions.</p>

10          Ready to offer your customers  
 11          eFinancial's top-tier customer support?

5

12        22. eFinancial maintains a close relationship with all of its partner companies, such as  
 13          Reliant Direct.

14        23. eFinancial is directly involved in the content development for partner websites  
 15          and customer/prospect communications.

16        24. For example, in a job posting eFinancial posted for a Marketing Partnership  
 17          Manager, the job description states:

18            **Content and Communications**

- 19            • Collaborate with external agencies, colleagues, and business  
partners to manage content development for partner websites,  
blog posts, and customer/prospect communications
- 20            • Manage review and approval of partner-related creative materials  
to ensure quality, legal, and brand standards are met
- 21            • Work with marketing automation experts to enhance smart  
campaigns to increase customer engagement and conversion

6

22          <sup>5</sup> <https://efinancial.com/eindependent/case-management/>

23          <sup>6</sup> <https://www.linkedin.com/jobs/view/marketing-partnership-manager-at-efinancial-1349797980/>

1        25. Considering the close relationship eFinancial maintains with its partners,  
 2 eFinancial should be aware of the telemarketing practices Reliant Direct uses to solicit sales from  
 3 consumers.

4        26. In fact, eFinancial itself provides its agents with an autodialer.

5        27. There are numerous references online regarding eFinancial's use of an autodialer,  
 6 including complaints from former employees:

7 May 22, 2019

Helpful (1)



"Good place"



Former Employee - Senior Account Executive in Chicago, IL



Recommends



Positive Outlook



Approves of CEO

I worked at eFinancial full-time for more than a year

10        Pros

11        Great opportunity to advance your career Uncapped commissions Great benefits  
 12        Great culture Great employees

13        Cons

14        Challenging for people not well equipped to only work on a dialer.

7

15        28. eFinancial is open about its use of autodialers, and even posted a job on LinkedIn  
 16 for a Workforce Optimization Manager (predictive dialer management / sales environment):



17        Workforce Optimization Manager (predictive dialer  
 18        management / sales environment)

19        eFinancial • Greater Chicago Area

20        ✖ This job is no longer accepting applications

21        The Workforce Optimization Manager is an individual contributor and  
 22        leader who is responsible for successfully managing our predictive dialer  
 23        initiatives, workforce and lead management. The key to success in this  
 24        opportunity is the ability to effectively manage short and long term  
 25        business strategies, while proactively partnering with business  
 26        stakeholders, to solve business problems and provide concise real time  
 27        updates. This includes managing through our rapidly changing sales  
 28        contact center environment, automating processes, creating useful data  
 29        driven insights, and pioneering long term, companywide strategic  
 30        objectives.

20        Contact the job poster



21        Eric Feizulov

22        Voted Selling Power 2018 Top  
 23        Greater Chicago Area

8

24        <sup>7</sup> [https://www.glassdoor.com/Reviews/eFinancial-Account-Executive-Reviews-EI\\_IE324485.0,10\\_KO11,28.htm](https://www.glassdoor.com/Reviews/eFinancial-Account-Executive-Reviews-EI_IE324485.0,10_KO11,28.htm)

1       29. Upon information and belief, eFinancial provides its partners with access to an  
 2 autodialer when providing access to its quote-based system.

3       30. By providing Reliant Direct with an autodialer, eFinancial is directing,  
 4 authorizing, and/or ratifying Reliant Direct's use of an autodialer on eFinancial's behalf.

5       31. In order to ensure that Reliant Direct is soliciting leads according to legal and  
 6 brand standards, as per the job description for the Marketing Partnership Manager, eFinancial  
 7 should ensure that its partners maintain a sufficient, functional opt-out system so that consumers  
 8 can easily opt-out of receiving additional solicitation calls.

9       32. By supporting and benefiting from the unlawful sales activity Reliant Direct uses  
 10 to solicit sales, eFinancial is responsible for, and ratifies Reliant Direct's unlawful behavior.

11       33. In fact, the Federal Communication Commission has provided instruction stating  
 12 that sellers such as eFinancial may not avoid liability by having their telemarketing outsourced:

13       [A]llowing the seller to avoid potential liability by outsourcing its telemarketing activities  
 14 to unsupervised third parties would leave consumers in many cases without an effective  
 15 remedy for telemarketing intrusions. This would particularly be so if the telemarketers  
 16 were judgment proof, unidentifiable, or located outside the United States, as is often the  
 17 case. Even where third-party telemarketers are identifiable, solvent, and amenable to  
 18 judgment limiting liability to the telemarketer that physically places the call would make  
 enforcement in many cases substantially more expensive and less efficient, since  
 consumers (or law enforcement agencies) would be required to sue each marketer  
 separately in order to obtain effective relief. As the FTC notes, because “[s]ellers may  
 have thousands of ‘independent’ marketers, suing one or a few of them is unlikely to  
 make a substantive difference for consumer privacy.”

19       *In re Joint Petition Filed by DISH Network, LLC et al. for Declaratory Ruling Concerning the  
 20 TCPA Rules, 28 FCC Rcd. 6574, at ¶ 37 (201) (“FCC 2013 Ruling”) (citations omitted)*

21       **Reliant Direct Markets eFinancial’s Services by Making Autodialed Calls to Consumers’  
 22 Cellular Phone Numbers Without Consent and Regardless of Whether They Are**

23       

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<sup>8</sup> <https://www.linkedin.com/jobs/view/workforce-optimization-manager-predictive-dialer-management-sales-environment-at-efinancial-224678455/>

## Registered on the National Do Not Call Registry

34. As explained by the Federal Communications Commission (“FCC”) in its 2012 order, the TCPA requires “*prior express written consent* for all autodialed or prerecorded [solicitation] calls to wireless numbers and residential lines.” *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG No. 02-278, FCC 12-21, 27 FCC Rcd. 1830 ¶ 2 (Feb. 15, 2012).

35. Yet in violation of this rule, eFinancial through Reliant Direct routinely fails to obtain any express written consent prior to making autodialed solicitation calls to cellular telephone numbers such as Plaintiff's.

36. In placing the calls that form the basis of this Complaint, Defendant Reliant Direct utilized an automatic telephone dialing system (“ATDS” or “autodialer”) in violation of the TCPA. Specifically, the hardware and software used by Defendant has the capacity to generate and store random numbers, and/or receive and store lists of telephone numbers, and to dial such numbers, *en masse*, in an automated fashion without human intervention. Defendant’s automated dialing equipment also is, or includes features substantially similar to, a predictive dialer, meaning that it is capable of making numerous phone calls simultaneously and automatically connecting answered calls to then available callers and disconnecting the rest (all without human intervention).

## PLAINTIFF JONES'S ALLEGATIONS

## **Reliant Direct Agents Repeatedly Called Plaintiff's Cell Phone Number Without Plaintiff's Consent, Despite Plaintiff Registering His Phone Number on the DNC**

37. On July 28, 2018, Plaintiff registered his cellular telephone number on the DNC in order to avoid receiving unwanted calls.

38. On July 10, 2019 at 9:27 AM, Plaintiff received a call on his cell phone from

1 Defendant Reliant Direct using phone number 478-298-7483. Plaintiff was not able to answer  
 2 this call, but he called 478-298-7483 back 1 minute later at 9:28 AM. Plaintiff spoke with an  
 3 agent who identified himself as being with eFinancial. Plaintiff told the agent that he already has  
 4 life insurance and asked to be put on a do not call list. The agent confirmed that Reliant Direct  
 5 would not call again.

6       39.     Despite a clear opt-out request, Plaintiff received a second autodialed call on July  
 7 10, 2019 at 12:36 PM from Defendant Reliant Direct using phone number 478-298-7483.  
 8 Plaintiff answered and then hung up the phone in frustration, as he did not want to be bothered  
 9 by Reliant Direct.

10       40.     Reliant Direct placed another call to Plaintiff's cell phone on July 10, 2019 at  
 11 4:35 PM using phone number 478-298-7483. Plaintiff heard the ring but did not answer this call.

12       41.     On July 15, 2019 at 11:37 AM, Reliant Direct called Plaintiff's cell phone using  
 13 phone number 478-298-7483. Plaintiff heard the ring but did not answer this call.

14       42.     On July 15, 2019 at 2:45 PM, Reliant Direct called Plaintiff's cell phone using  
 15 phone number 478-298-7483. Plaintiff was unable to answer this call, but he called Reliant  
 16 Direct back using phone number 478-298-7483 at 2:46 PM. Again, the agent said they were with  
 17 eFinancial, and Plaintiff made it clear he was not interested in getting an insurance quote and  
 18 asked to be put on Reliant Direct's do not call list. Plaintiff was assured he would not be called  
 19 again.

20       43.     Despite yet another clear opt-out request, Reliant Direct called Plaintiff's cell  
 21 phone using phone number 478-298-7483 on July 15, 2019 at 5:32 PM. Plaintiff answered this  
 22 call and hung up immediately in frustration, but he called back at 5:32 PM and made yet another  
 23 request for the calls to stop and to be put on Reliant Direct's do not call list. Again, Plaintiff was  
 24 assured he would not be called again.

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1       44. On July 18, 2019 at 11:31 AM, Plaintiff received yet another unwanted  
 2 solicitation call from Reliant Direct on his cell phone. Plaintiff was unable to answer this call,  
 3 but he called Reliant Direct back at 11:31 AM and again asked to be put on Reliant Direct's do  
 4 not call list. The agent confirmed that the calls would stop.

5       45. On July 18, 2019 at 2:08 PM, Plaintiff received an autodialed call from Defendant  
 6 Reliant Direct using phone number 478-298-7483. Plaintiff answered this call. The agent made  
 7 reference to eFinancial again, as Plaintiff was told in previous calls. Plaintiff asked the agent to  
 8 add him to their do not call list and the agent confirmed this would be done.

9       46. Plaintiff believes Reliant Direct called him using an autodialer due to the  
 10 numerous calls he received, despite asking repeatedly for the calls to stop, and based on the  
 11 known fact that Reliant Direct and eFinancial do use autodial systems.

12       47. Plaintiff does not have a relationship with Reliant Direct, eFinancial, or any of  
 13 eFinancial's affiliated companies, nor has he ever requested that Reliant Direct call him or  
 14 consented to any contact from either Defendant.

15       48. Simply put, Reliant Direct did not obtain Plaintiff's prior express written consent  
 16 to place solicitation telephone calls to him on his cellular telephone number using an autodialer.

17       49. The unauthorized telephone calls made by Reliant Direct, as alleged herein, have  
 18 harmed Plaintiff in the form of annoyance, nuisance, and invasion of privacy, and disturbed  
 19 Jones's use and enjoyment of his phone, in addition to the wear and tear on the phones' hardware  
 20 (including the phones' battery) and the consumption of memory on the phone.

21       50. Seeking redress for these injuries, Jones, on behalf of himself and Classes of  
 22 similarly situated individuals, brings suit under the Telephone Consumer Protection Act, 47  
 23 U.S.C. § 227, *et seq.*, which prohibits unsolicited autodialed telephone calls to cellular  
 24 telephones and unsolicited calls to telephone numbers registered on the DNC.

## CLASS ALLEGATIONS

## **Class Treatment Is Appropriate for Plaintiff's TCPA Claims**

51. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure 23(b)(2) and Rule 23(b)(3) on behalf of himself and all others similarly situated and seeks certification of the following four Classes:

**Autodialized No Consent Class:** All persons in the United States who from four years prior to the filing of this action (1) Defendant Reliant Direct called on behalf of eFinancial, (2) on the person's cellular telephone number, (3) using the same dialing equipment used to call Plaintiff and (4) for whom either Defendant claims (a) it obtained prior express written consent in the same manner as either Defendant claims it obtained prior express written consent to call Plaintiff, or (b) the Defendants did not obtain prior express written consent.

**Do Not Call Registry Class:** All persons in the United States who from four years prior to the filing of this action (1) Defendant Reliant Direct called on behalf of eFinancial, (2) on the person's residential telephone number, (3) two or more times during any twelve month period, and (4) for whom either Defendant claims (a) it obtained prior express written consent in the same manner as either Defendant claims it obtained prior express written consent to call Plaintiff, or (b) the Defendants did not obtain prior express written consent.

**Internal Do Not Call Registry Class:** All persons in the United States who from four years prior to the filing of this action (1) Defendant Reliant Direct called on behalf of eFinancial, (2) on the person's residential telephone number, (3) two or more times during any twelve month period.

52. The following individuals are excluded from the Classes: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendants, their subsidiaries, parents, successors, predecessors, and any entity in which either Defendant or its parents have a controlling interest and their current or former employees, officers and directors; (3) Plaintiff's attorneys; (4) persons who properly execute and file a timely request for exclusion from the Classes; (5) the legal representatives, successors or assigns of any such excluded persons; and (6) persons whose claims against either Defendant have been fully and finally adjudicated and/or released. Plaintiff anticipates the need to amend the Class definitions

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following appropriate discovery.

53. **Numerosity:** On information and belief, there are hundreds, if not thousands of members of the Classes such that joinder of all members is impracticable.

54. **Commonality and Predominance:** There are many questions of law and fact common to the claims of Plaintiff and the Classes, and those questions predominate over any questions that may affect individual members of the Classes. Common questions for the Classes include, but are not necessarily limited to the following:

- (a) whether Reliant Direct used an automatic telephone dialing system to make its calls to Plaintiff and other consumers;
- (b) whether Reliant Direct systematically made multiple telephone calls to Plaintiff other and consumers whose telephone numbers were registered with the DNC;
- (c) whether Reliant Direct implemented adequate policies and procedures for maintaining an internal do not call list prior to its calls to Plaintiff and other consumers;
- (d) whether Reliant Direct made calls to Plaintiff and other consumers without first obtaining prior express written consent to make the calls;
- (e) whether Reliant Direct's conduct constitutes a violation of the TCPA;
- (f) whether eFinancial is vicariously liable for Reliant Direct's conduct; and
- (g) whether members of the Classes are entitled to treble damages based on the willfulness of Defendants' conduct.

55. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Classes, and has retained counsel competent and experienced in class actions. Plaintiff has no interests antagonistic to those of the Classes, and the Defendants have no defenses unique to Plaintiff. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the members of the Classes, and have the financial resources to do so. Neither Plaintiff nor his counsel has any interest adverse to the Classes.

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56. **Appropriateness:** This class action is also appropriate for certification because Defendants have acted or refused to act on grounds generally applicable to the Classes and as a whole, thereby requiring the Court’s imposition of uniform relief to ensure compatible standards of conduct toward the members of the Classes and making final class-wide injunctive relief appropriate. Defendants’ business practices apply to and affect the members of the Classes uniformly, and Plaintiff’s challenge of those practices hinges on Defendants’ conduct with respect to the Classes as wholes, not on facts or law applicable only to Plaintiffs. Additionally, the damages suffered by individual members of the Classes will likely be small relative to the burden and expense of individual prosecution of the complex litigation necessitated by Defendants’ actions. Thus, it would be virtually impossible for the members of the Classes to obtain effective relief from Defendants’ misconduct on an individual basis. A class action provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

## **FIRST CAUSE OF ACTION**

## Telephone Consumer Protection Act (Violations of 47 U.S.C. § 227)

**(On Behalf of Plaintiff Jones and the Autodialed No Consent Class)**

57. Plaintiff repeats and realleges paragraphs 1 through 56 of this Complaint and incorporates them by reference herein.

58. Reliant Direct and/or its agents made unwanted solicitation telephone calls to cellular telephone numbers belonging to Plaintiff and the other members of the Autodialer No Consent Class using an autodialer on behalf of eFinancial.

59. These solicitation telephone calls were made *en masse* without the consent of the Plaintiff and the other members of the Autodialer No Consent Class to receive such solicitation telephone calls.

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206-605-1424

60. Reliant Direct and eFinancial have, therefore, violated 47 U.S.C. § 227(b)(1)(A)(iii). As a result of Defendants' conduct, Plaintiff and the other members of the Autodialized No Consent Class are each entitled to, under 47 U.S.C. § 227(b)(3)(B), a minimum of \$500.00 in damages for each violation of such act.

61. In the event that the Court determines that Defendants' conduct was wilful and knowing, it may, under 47 U.S.C. § 227(b)(3)(C), treble the amount of statutory damages recoverable by Plaintiff and the other members of the Autodialed No Consent Class.

## **SECOND CAUSE OF ACTION**

**Telephone Consumer Protection Act  
(Violation of 47 U.S.C. § 227)**  
**(On Behalf of Plaintiff Jones and the Do Not Call Registry Class)**

62. Plaintiff repeats and realleges the paragraphs 1 through 56 of this Complaint and incorporates them by reference herein.

63. The TCPA's implementing regulation, 47 C.F.R. § 64.1200(c), provides that “[n]o person or entity shall initiate any telephone solicitation” to “[a] residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the federal government.”

64. 47 C.F.R. § 64.1200(e), provides that § 64.1200(c) is “applicable to any person or entity making telephone solicitations or telemarketing calls to wireless telephone numbers.”<sup>9</sup>

65. Any "person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the regulations prescribed under this subsection may" bring a private action based on a violation of said regulations, which were promulgated to protect telephone subscribers' privacy rights to avoid receiving telephone

<sup>9</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003) Available at [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-03-153A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-03-153A1.pdf)

1 solicitations to which they object. 47 U.S.C. § 227(c).

2 66. Defendant Reliant Direct violated 47 C.F.R. § 64.1200(c) on behalf of Defendant  
 3 eFianncial by initiating, or causing to be initiated, telephone solicitations to telephone  
 4 subscribers such as Plaintiff and the Do Not Call Registry Class members who registered their  
 5 respective telephone numbers on the National Do Not Call Registry, a listing of persons who do  
 6 not wish to receive telephone solicitations that is maintained by the federal government.

7 67. Defendants violated 47 U.S.C. § 227(c)(5) because Plaintiff and the Do Not Call  
 8 Registry Class received more than one telephone call in a 12-month period made by or on behalf  
 9 of Defendants in violation of 47 C.F.R. § 64.1200, as described above. As a result of Defendants'  
 10 conduct as alleged herein, Plaintiff and the Do Not Call Registry Class suffered actual damages  
 11 and, under section 47 U.S.C. § 227(c), are entitled, *inter alia*, to receive up to \$500 in damages  
 12 for such violations of 47 C.F.R. § 64.1200.

13 68. To the extent Defendants' misconduct is determined to be willful and knowing,  
 14 the Court should, pursuant to 47 U.S.C. § 227(c)(5), treble the amount of statutory damages  
 15 recoverable by the members of the Do Not Call Registry Class.

16 **THIRD CAUSE OF ACTION**

17 **Telephone Consumer Protection Act  
 (Violation of 47 U.S.C. § 227)**  
 18 **(On Behalf of Plaintiff Jones and the Internal Do Not Call Class)**

19 69. Plaintiff Jones repeats and realleges paragraphs 1 through 56 of this Complaint  
 20 and incorporates them by reference herein.

21 70. Under 47 C.F.R. § 64.1200(d), “[n]o person or entity shall initiate any call for  
 22 telemarketing purposes to a residential telephone subscriber unless such person or entity has  
 23 instituted procedures for maintaining a list of persons who request not to receive telemarketing  
 24 calls made by or on behalf of that person or entity. The procedures instituted must meet the

1 following minimum standards:

2 (1) Written policy. Persons or entities making calls for telemarketing purposes  
 3 must have a written policy, available upon demand, for maintaining a do-not-call  
 list.

4 (2) Training of personnel engaged in telemarketing. Personnel engaged in any  
 5 aspect of telemarketing must be informed and trained in the existence and use of  
 the do-not-call list.

6 (3) Recording, disclosure of do-not-call requests. If a person or entity making a  
 7 call for telemarketing purposes (or on whose behalf such a call is made) receives a  
 8 request from a residential telephone subscriber not to receive calls from that  
 person or entity, the person or entity must record the request and place the  
 subscriber's name, if provided, and telephone number on the do-not-call list at the  
 time the request is made. Persons or entities making calls for telemarketing  
 purposes (or on whose behalf such calls are made) must honor a residential  
 subscriber's do-not-call request within a reasonable time from the date such  
 request is made. This period may not exceed thirty days from the date of such  
 request. If such requests are recorded or maintained by a party other than the  
 person or entity on whose behalf the telemarketing call is made, the person or  
 entity on whose behalf the telemarketing call is made will be liable for any  
 failures to honor the do-not-call request. A person or entity making a call for  
 telemarketing purposes must obtain a consumer's prior express permission to  
 share or forward the consumer's request not to be called to a party other than the  
 person or entity on whose behalf a telemarketing call is made or an affiliated  
 entity.

15 (4) Identification of sellers and telemarketers. A person or entity making a call for  
 16 telemarketing purposes must provide the called party with the name of the  
 17 individual caller, the name of the person or entity on whose behalf the call is  
 being made, and a telephone number or address at which the person or entity may  
 be contacted. The telephone number provided may not be a 900 number or any  
 other number for which charges exceed local or long distance transmission  
 charges.

19 (5) Affiliated persons or entities. In the absence of a specific request by the  
 20 subscriber to the contrary, a residential subscriber's do-not-call request shall apply  
 to the particular business entity making the call (or on whose behalf a call is  
 made), and will not apply to affiliated entities unless the consumer reasonably  
 would expect them to be included given the identification of the caller and the  
 product being advertised.

22 (6) Maintenance of do-not-call lists. A person or entity making calls for  
 23 telemarketing purposes must maintain a record of a consumer's request not to  
 receive further telemarketing calls. A do-not-call request must be honored for 5  
 years from the time the request is made.

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71. Defendant Reliant Direct or its agent made marketing calls to Plaintiff and members of the Internal Do Not Call Class on behalf of Defendant eFinancial without implementing internal procedures for maintaining a list of persons who request not to be called by the entity and/or by implementing procedures that do not meet the minimum requirements to allow either Defendant to initiate telemarketing calls.

72. The TCPA provides that any “person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the regulations prescribed under this subsection may” bring a private action based on a violation of said regulations, which were promulgated to protect telephone subscribers’ privacy rights to avoid receiving telephone solicitations to which they object. 47 U.S.C. § 227(c)(5).

73. Defendants have, therefore, violated 47 U.S.C. § 227(c)(5). As a result of Defendants' conduct, Plaintiff and the other members of the Internal Do Not Call Class are each entitled to up to \$1,500 per violation.

## PRAYER FOR RELIEF

**WHEREFORE**, Plaintiff, individually and on behalf of the Classes, prays for the following relief:

- a) An order certifying the Classes as defined above; appointing Plaintiff as the representative of the Classes; and appointing his attorneys as Class Counsel;
- b) An award of actual and/or statutory damages to be paid into a common fund for the benefit of Plaintiff and the Classes;
- c) An order declaring that Defendants' actions violated the TCPA;
- d) An injunction requiring Defendants to cease all unsolicited calling activity, and to otherwise protect the interests of the Classes; and
- e) Such further and other relief as the Court deems just and proper.

CLASS ACTION COMPLAINT, Page 17 of 18

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## JURY TRIAL DEMAND

Plaintiff requests a jury trial.

Respectfully Submitted,

**CALVIN JONES**, individually and on behalf of those similarly situated individuals

Dated: October 8, 2019

s/ Eric R. Draluck  
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<sup>10</sup>\**Pro Hac Vice motion forthcoming*

*Attorneys for Plaintiff and the putative Classes*

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